

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA**

IN RE:)	
PROCEDURES FOR THE FILING,)	GENERAL ORDER NO.
SERVICE, AND MANAGEMENT OF)	2:21-mc-3932-ECM
HIGHLY SENSITIVE DOCUMENTS)	
)	

WHEREAS, in response to recent disclosures of widespread breaches of both private sector and government computer systems, federal courts are immediately adding new security procedures to protect highly sensitive documents filed with the courts;

THE COURT FINDS that, pursuant to Civil Rule 5(d)(3)(A) and Criminal Rule 49(b)(3)(A), good cause exists to require all parties to file certain highly sensitive documents outside of the court's electronic filing system.

THEREFORE, IT IS HEREBY ORDERED that, effective as of the date of this order and until such time as the court orders otherwise, the filing of certain highly sensitive documents shall be subject to the procedures and requirements set forth below. This General Order supersedes any and all inconsistent provisions in existing local rules or other general orders of this court.

1. Documents Subject to this Order

The filing procedures set forth below apply to documents that contain highly sensitive information.

- a. The following types of documents are deemed highly sensitive documents (HSDs): Applications for search warrants and for electronic surveillance under 18 U.S.C. § 2518 prior to disclosure to the affected parties and assuming the party providing the documents requests such treatment, as well as any document that the presiding judge finds to be so sensitive that any disclosure would cause a high risk of extreme harm to a person or entity or would constitute a breach of National Security.
- b. The following types of documents generally are not considered HSDs: Presentence reports, pretrial release reports, pleadings related to cooperation in most criminal cases, social security records, administrative immigration records, and sealed filings in most civil cases.
- c. Any dispute as to whether a document is an HSD shall be resolved by the presiding judge or, when no presiding judge is assigned, the chief judge.

2. Filing of Authorized HSDs

- a. A party filing an HSD pursuant to a court order or applicable law shall submit to the clerk's office the HSD, the certificate of service, and, if applicable, a copy of the court order authorizing the treatment of that document as highly sensitive in the form of either two paper copies or an electronic copy on a secure electronic device (as described in paragraph 6 below).
- b. The required documents, unfolded and on 8 ½ x 11 paper, or the secure electronic device shall be submitted to the clerk's office in a sealed envelope marked "HIGHLY SENSITIVE DOCUMENT." The outside of the envelope shall be affixed with a copy of the HSD's caption page (with confidential information redacted).
- c. The filing party shall serve the HSD on the other parties as follows:
 - i. Civil cases—by any manner specified in Civil Rule 5(b)(2), except for service via the court's electronic filing system; or
 - ii. Criminal cases—by any manner specified in Criminal Rule 49(a)(3)(B) or (a)(4).
- d. The clerk's office will make an informational docket entry in the court's electronic filing system indicating that the HSD was filed with the court and will maintain the HSD in a secure paper filing system or a secure standalone computer system that is not connected to any network.

3. Filing of Motions to Treat a Document as an HSD

- a. Represented parties
 - i. A represented party shall file a motion to treat a document as an HSD and a proposed order electronically under existing procedures, except that a copy of the proposed HSD shall not be filed electronically. The motion shall explain why the proposed document constitutes an HSD or why it should otherwise be subject to the heightened protection for HSDs. In the event the explanation itself would be highly sensitive, a supporting brief as well as supporting affidavits (if necessary) will be served upon any opposing party (unless excused by Order or operation of law) and then shall be delivered in printed form, but not then filed, to the judge presiding over the case. The judge presiding over the matter shall determine if the brief and/or motion shall then be filed in CM/ECF, under seal or otherwise, or treated as an HSD.
 - ii. As soon as practicable after the motion is filed, the filing party shall deliver to the clerk's office the HSD sought to be filed along with a certificate of service in the form of either two paper copies or an electronic copy on a secure electronic device (as described in paragraph 6 below). The documents or secure electronic device should be packaged as specified in paragraph 2.b. The Clerk shall receive, but not

file, a copy of the proposed HSD electronically but shall instead hold the document or secure electronic device in a secure location until the judge presiding over the matter rules on the motion.

- iii. The filing party shall serve the proposed HSD on the other parties as specified in paragraph 2.c.
 - iv. The court will issue an order on the motion and, if granted, an informational entry will be made on the case docket indicating that the HSD has been filed with the court. The clerk's office will maintain the HSD in a secure paper filing system or a secure standalone computer system that is not connected to any network.
- b. Pro se parties
- i. Pro se parties shall submit to the clerk's office for filing a motion to treat a document as an HSD, the HSD sought to be filed, and a certificate of service in the form of either two paper copies or an electronic copy on a secure electronic device (as described in paragraph 6 below). The Clerk shall receive, but not file, a copy of the proposed HSD electronically but shall instead hold the document or secure electronic device in a secure location until the judge presiding over the matter rules on the motion. The documents or secure electronic device should be packaged as specified in paragraph 2.b. The motion shall explain why the proposed document constitutes an HSD or why it should otherwise be subject to the heightened protection for HSDs. In the event the explanation itself would be highly sensitive, a supporting brief as well as supporting affidavits (if necessary) will be served upon any opposing party (unless excused by Order or operation of law) and then shall be delivered in printed form, but not then filed, to the judge presiding over the case. The judge presiding over the matter shall determine if the brief and/or motion shall then be filed in CM/ECF, under seal or otherwise, or treated as an HSD.
 - ii. The filing party shall serve the proposed HSD on the other parties as specified in paragraph 2.c.
 - iii. The court will issue an order on the motion and, if granted, an informational entry will be made on the case docket indicating that the HSD has been filed with the court. The clerk's office will maintain the HSD in a secure paper filing system or a secure standalone computer system that is not connected to any network.

4. Service of Highly Sensitive Court Orders

- a. If the court determines that a court order contains highly sensitive information, the clerk's office will file and maintain the order in a secure paper filing system or a secure standalone computer system that is not connected to any network

and will serve paper copies of the order on the parties via mail. The clerk's office will make an informational docket entry in the court's electronic filing system indicating that the HSD was filed and will maintain the HSD in a secure paper filing system or a secure standalone computer system that is not connected to any network.

5. Removal of Existing HSDs or Highly Sensitive Cases from the Court's Electronic Filing System

- a. Upon motion of a party or upon its own motion, the court may determine that a document, case, or any portion of it, that has been filed electronically is highly sensitive and direct that the HSD or case be removed from the court's electronic filing system and maintained by the clerk's office in a secure paper filing system or a secure standalone computer system that is not connected to any network.
- b. A party's motion to remove an HSD or highly sensitive case from the court's electronic filing system shall explain why such document or case is highly sensitive or why it should otherwise be subject to the heightened protection for HSDs. In the event the explanation itself would be highly sensitive, a supporting brief as well as supporting affidavits (if necessary) will be served upon any opposing party (unless excused by Order or operation of law) and then shall be delivered in printed form (or as otherwise directed) to the judge presiding over the case. The judge presiding over the matter shall determine if the brief and/or motion shall then be filed in CM/ECF, under seal or otherwise, or treated as an HSD.

6. Secure Electronic Device

A secure electronic device would include any device approved by this Court as such, including a USB flash drive commonly referred to as a thumb drive.

7. Questions about HSD Filing Procedures

Any questions about how an HSD should be filed with the court pursuant to this General Order should be directed to the Clerk of this Court or his or her Chief Deputy.

IT IS SO ORDERED, this 8th day of January, 2021.

/s/ Emily C. Marks
EMILY C. MARKS
CHIEF UNITED STATES DISTRICT JUDGE